IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2369 OF 2007

Girilal & Company)
A Partnership Firm constituted)
under the Indian Partnership)
Act, 1932 and having its)
address at 38, Dahanukar)
Building, 480, Kalbadevi Road,)
Mumbai-400 002.)..Petitioners

Versus

1.S.L.Meena, the Income-tax)
Officer-14(2)(2), Mumbai,)
having his office at Earnest)
House, 3rdFloor, Nariman)
Point, Mumbai-400 021.)
2.Y.P.Verma, the Deputy)
having his office at Earnest)
House, 3rdFloor, Nariman)
Point, Mumbai-400 021.)
3.K.A. Gopinathan, the)
Commissioner of Income-tax,)
Mumbai City-XIV,)
having his office at Earnest)
House, 6th Floor,Nariman)
Point, Mumbai-400 021.)
4.The Unkion of India through)
the Secretary, Ministry of)
Finance, Government of India)
North Block, New Delhi-11001)..Respondents

Mr.Irani with Mr. A.K.Jasani for the Petitioner.

Mr.S.M.Shah with Mr. Sandeep Wasnik for respondents

CORAM : F.I. REBELLO &
R.S. MOHITE, JJ.
DATED : 12TH DECEMBER 2007

JUDGMENT (PER F.I. REBELLO, J.):

. A notice was served on the petitioners by Resopondent No.1 under Section 148 of the Income-tax Act, hereinafter referred to as the Act, in which it is stated that he has

reason to belive that the petitioners income chargeable to tax for the assessment year 2001-02 had escaped assessment within the meaning of Section 147 of the Act. On 1st May, 2003 an assessment order was passed under Section 143(3) of the Act determining the total income at Rs.12,36,393/- after allowing deduction under Section 80IB (10) of the Act. By the communication dated 11th April, 2007 the petitioner's Chartered Accountant sought the reasons recorded for re-opening the assessment. By communication dated 12th April, 2007 the reasons were made available. The respondent No.1 found that the assessee the petitioner herein had not correctly disclosed the actual assets of the plot used for construction and hence he was not entitled for deduction under Section 80IB (10). It was noted that the information regarding the actual size of the plot used for the construction of Giri Shikhar and Giri Centre was only available in the valuation report and hence the case is covered under Explanation 2 (c) (iv) of Section 147 of the Act. The petitioner filed his reply and also filed his returns.

2. By the present petition it is the petitioners case that all the information was available before the Assessing Officer and consequently no income has escaped assessment.Scrutiny assessment cannot be reopened beyond 4 years and mere change of opinion does not constitute "reasons to believe". Learned Counsel has drawn our attention to the judgment of the Supreme Court in

Commissioner of Income-tax v. Corporation Bank Ltd. 254 ITR 202, judgment of the Division Bench of this Court in **ICICI Bank Ltd. vs. K.J. Rao & Another, 268 ITR 203 (Bom.)**, Judgment of this Court in **Bhogwati Sahakari Sakhar Karkhana Ltd. vs. Deputy Commissioner of Income-tax & Ors., 269 ITR 186** and the Judgment of the Supreme Court in **Genmini Leather Stores vs. Income-tax Officer, B-Ward, Agra & Ors., 100 ITR 2.(S.C.).**

3. On the other hand on behalf of the Revenue the learned Counsel points out that the Appellant did not disclose the real size of the plot and merely because the information was contained in annexures by itself cannot be said to be disclosure of information. It is further submitted that formation of opinion by the Assessment Officer has to be considered on the touch stone whether there was reasonable belief that income had escaped assessment and for that purpose reliance is placed on the judgment of the Supreme Court in **Raymond Woollen Mills Ltd. vs. Income-tax Officer and Ors., 236 ITR 34** (S.C.).

4. From the material on record it would be clear that prima facie to claim benefit under Section 81-IB on the relevant date one of the requirements is that the size of the plot of land is a minimum of one acre. The petitioners in the declaration filed under Section 80-IB (10) whilst claiming deduction had set out as under;-

"The size of the plot of land is 4074.90 sq. meter i.e. it is higher than one Acre. The approved plan is attached herewith showing the size of the plot of land."

It is no doubt true that in so far as the plan annexed and the valuation report an existing building was shown and another a proposed building. In the valuation of property done by Doshi & Co., all that was set out is total F.S.I. area after deduction and the valuation. Pursuant to the notice by the A.O. by communication of February, 10, 2003 the information as set out therein was set out.

5. The question is whether because some of the information was contained in to the annexures and also in respect of the statement recorded whether it can be said that there were no reasons to believe for the notice being issued. One of the questions asked was as under:-

"Question No.5: What activities were going on of construction in Andheri and since what period.

Answer: One plot of land was purchased in the year 1961-62 in J.B. Nagar, Andheri (W), admeasuring 3645 sq. yards and another plot of land was purchased later on after few years, admeasuring about 900 sq. yards. Some part of the plot was exchanged with the neighbour to make it one piece of land. One building

was constructed on a portion of land in the year 1965-66. The flats of the building were given to the various parties. In the year 1996-97 we started developing the balance plot and started constructing residential building of sale of flats on ownership basis."

6. Considering the tests laid down by the Supreme Court in Raymond Woollen Mills Ltd. (supra) the question is whether the Assessing Officer had prima facie reason to believe that the income had escaped assessment. We have earlier noted explanation 2(c)(iv) of Section 147. In our opinion as there was no true disclosure of the exact size of the plot when the new construction commenced it prima facie cannot be said that there were no reasons to believe. The information was in the annexures and consequently the explanation 2(c)(iv) of Section 147 of the Act will apply. The various judgments relied upon on behalf of the petitioner assessee are distinguishable in as much as either there was no failure to disclose the full and true relevant information and/or it was merely a change of opinion. The question is whether the petitioners considering the size of the plot and part of it having already been developed could claim the benefit under Section 10-IB (10) of the I.T. Act. The issue as to whether the size of the plot of land has to be considered at the time the new construction is being put up or whether the building already constructed including various deductions like R.G. Area, set back had to be

considered in computing the size of the plot is an issue which we do not propose to answer at this stage in the exercise of our extra ordinary jurisdiction. The petitioner to invoke the extra ordinary jurisdiction of this Court must also make out a case that no part of the relevant material had been kept out from the Assessing Officer and/or that it would not be unreasonable for the Assessing Officer to draw inference from the annexures produced.

7. In the instant case we find that there was no true and full disclosure by the petitioner and consequently we find no merit in this petition, which is accordingly dismissed. Rule discharged.

. Learned Counsel for the petitioner seeks stay of the order. It is not a fit case for grant of stay. Hence application for stay is rejected.

(R.S.MOHITE, J.) **(F.I. REBELLO, J)**